

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed June 9, 2009. At the time of the Office Action, Claims 1, 3, 4, 7-10, 13, 14, and 37-45 were pending in this Application. Claims 1, 3, 4, 7-10, 13, 14, and 37-45 were rejected. Claims 2, 5 and 6 were previously cancelled without prejudice or disclaimer and Claims 11, 12 and 15-36 were previously cancelled due to an election/restriction requirement. Claims 1 and 37 are herein amended. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 1, 3, 4, 7-10, 13, 14, and 37-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over “High Surface Area Substrates for DNA Arrays” *Materials Research Society Symposium Proceedings*, p. 371-376, by M. Glazer et al. (“*Glazer*”) and U.S. Patent No. 5,629,186 issued to Robert D. Yasukawa et al. (“*Yasukawa*”), and if necessary in view of PCT Publication No. WO 96/24631 by Mark Lyles (“*Lyles*”).

Claims 1, 3, 4, 7-10, 13, 14, and 37-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,959,098 issued to Martin Goldberg et al. (“*Goldberg*”) and *Yasukawa and Lyles*.

Although Applicant disagrees with the Examiner’s position stated in the Final Office Action and maintained in the Advisory Action, Applicant has amended independent Claims 1 and 37 in order to advance prosecution.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Applicant respectfully submits that amended Claims 1 and 37 are allowable over *Glazer*, *Yasukawa*, *Lyles*, and *Goldberg*, at least because none of these references, alone or in combination, teach the limitations of amended Claims 1 and 37.

For example, amended Claim 1 recites “wherein said material has a mean pore diameter of ***greater than 100 microns***,” and amended Claim 37 recites “wherein said material has a mean pore diameter of ***less than 10 microns***.¹” None of *Glazer*, *Yasukawa*, *Lyles*, or *Goldberg* teach these pore sizes, as discussed below.

Glazer. The Examiner acknowledges that *Glazer* does not specifically teach a pore diameter. (Final Office Action, page 4).

Yasukawa. *Yasukawa* teaches “a rigid fiber structure having 3-dimensionally continuous network of interconnecting voids or pores, such as voids 31, which tend to have “long” (uninterrupted) dimensions between about 10-100 um. (col. 4, lines 5-11). *Yasukawa* does not teach a ***mean pore diameter of greater than 100 microns or less than 10 microns***. Thus, *Yasukawa* does not teach these limitations of amended Claims 1 and 37.

Lyles. The Examiner alleges that *Lyles* teaches the previously claimed pore size (i.e., a mean pore diameter of 10-100 microns) at page 5, lines 3+ of *Lyles*. (Final Office Action, page 7). *Lyles* teaches a filler material having “mean pore diameters greater than 10 microns, generally between 10 and 25 microns, most preferably from about 20 to about 22 microns)...” (*Lyles*, page 5, lines 25-30). Thus, *Lyles* does not teach a ***mean pore diameter of greater than 100 microns or less than 10 microns***. Thus, *Lyles* does not teach these limitations of amended Claims 1 and 37.

Goldberg. The Examiner acknowledges that *Goldberg* does not specifically teach a pore diameter. (Final Office Action, page 10).

For at least these reasons, none of *Glazer*, *Yasukawa*, *Lyles*, and *Goldberg* teach the limitations of amended independent Claims 1 and 37 discussed above. Thus, Applicant respectfully submits that amended Claims 1 and 37 are allowable over *Glazer*, *Yasukawa*, *Lyles*, and *Goldberg*. Accordingly, Applicant respectfully requests reconsideration and allowance of amended Claims 1 and 27, as well as all claims that depend therefrom.

Request for Continued Examination

Applicant respectfully submits a Request for Continued Examination (RCE) Transmittal, along with a Petition for Three-Month Extension of Time. The Commissioner is authorized to charge any fees required to Deposit Account 50-4871 in order to effectuate these filings.

Change of Attorney Docket Number

Applicant respectfully requests revision of the Attorney Docket No. in the United States Patent and Trademark Office Records. Please replace with Attorney Docket No. **68351.105050**.

Change of Correspondence Address

Applicant respectfully requests that all papers pertaining to the above-captioned patent application be directed to Customer No. **86528** and all telephone calls should be directed to Applicant's attorney, Eric M. Grabski, at 512.457.2030. A Request for Change of Correspondence Address form is filed herewith.

CONCLUSION

Applicant has now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration of all claims.

Applicant submits a Request for Continued Examination. The Commissioner is authorized to charge the fee of \$405.00 required to Deposit Account 50-4871 of King & Spalding LLP in order to effectuate this filing.

Applicant also respectfully submits a Petition for Three-Month Extension of Time. The Commissioner is authorized to charge the fee of \$555.00 required to Deposit Account 50-4871 in order to effectuate this filing.

Applicant believes no other fees are due at this time. The Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P. in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.457.2030.

Respectfully submitted,
KING & SPALDING L.L.P.
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Date: 12/9/09

SEND CORRESPONDENCE TO:

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